

**63M-4-101. Title.**

This chapter is known as the "Utah Energy Act."

Renumbered and Amended by Chapter 382, 2008 General Session

**63M-4-102. Definitions.**

As used in this chapter:

(1) "Energy advisor" means the governor's energy advisor appointed under Section 63M-4-401.

(2) "Office" means the Office of Energy Development created in Section 63M-4-401.

(3) "State agency" means an executive branch:

- (a) department;
- (b) agency;
- (c) board;
- (d) commission;
- (e) division; or
- (f) state educational institution.

Amended by Chapter 37, 2012 General Session

**63M-4-201. Governor's energy advisor -- Duties.**

(1) (a) The governor shall appoint an energy advisor.

(b) The governor's energy advisor serves at the pleasure of the governor.

(2) The governor's energy advisor shall:

- (a) advise the governor on energy-related matters;
- (b) annually review and propose updates to the state's energy policy, as contained in Section 63M-4-301;
- (c) promote as the governor's energy advisor considers necessary:
  - (i) the development of cost-effective energy resources both renewable and nonrenewable; and
  - (ii) educational programs, including programs supporting conservation and energy efficiency measures;
- (d) coordinate across state agencies to assure consistency with state energy policy, including:
  - (i) working with the State Energy Program to promote access to federal assistance for energy-related projects for state agencies and members of the public;
  - (ii) working with the Division of Emergency Management to assist the governor in carrying out the governor's energy emergency powers under Title 53, Chapter 2a, Part 10, Energy Emergency Powers of the Governor Act;
  - (iii) participating in the annual review of the energy emergency plan and the maintenance of the energy emergency plan and a current list of contact persons required by Section 53-2a-902; and
  - (iv) identifying and proposing measures necessary to facilitate low-income consumers' access to energy services;

(e) coordinate with the Division of Emergency Management ongoing activities designed to test an energy emergency plan to ensure coordination and information sharing among state agencies and political subdivisions in the state, public utilities and other energy suppliers, and other relevant public sector persons as required by Sections 53-2a-902, 53-2a-1004, 53-2a-1008, and 53-2a-1010;

(f) coordinate with requisite state agencies to study:

(i) the creation of a centralized state repository for energy-related information;

(ii) methods for streamlining state review and approval processes for energy-related projects; and

(iii) the development of multistate energy transmission and transportation infrastructure;

(g) coordinate energy-related regulatory processes within the state;

(h) compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects;

(i) act as the state's advocate before federal and local authorities for energy-related infrastructure projects or coordinate with the appropriate state agency; and

(j) help promote the Division of Facilities Construction and Management's measures to improve energy efficiency in state buildings.

(3) The governor's energy advisor has standing to testify on behalf of the governor at the Public Service Commission created in Section 54-1-1.

Amended by Chapter 295, 2013 General Session

#### **63M-4-202. Agency cooperation.**

A state agency shall provide the state energy officer with any energy-related information requested by the governor's energy advisor if the governor's energy advisor's request is consistent with other law.

Renumbered and Amended by Chapter 382, 2008 General Session

#### **63M-4-203. Reports.**

(1) The governor's energy advisor shall report annually to:

(a) the governor; and

(b) the Natural Resources, Agriculture, and Environment Interim Committee.

(2) The report required in Subsection (1) shall:

(a) summarize the status and development of the state's energy resources;

(b) address the governor's energy advisor's activities under this part; and

(c) recommend any energy-related executive or legislative action the governor's energy advisor considers beneficial to the state, including updates to the state energy policy under Section 63M-4-301.

Amended by Chapter 37, 2012 General Session

#### **63M-4-301. State energy policy.**

- (1) It is the policy of the state that:
  - (a) Utah have adequate, reliable, affordable, sustainable, and clean energy resources;
  - (b) Utah will promote the development of:
    - (i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and tar sands; and
    - (ii) renewable energy resources, including geothermal, solar, wind, biomass, biodiesel, hydroelectric, and ethanol;
  - (c) Utah will promote the study of nuclear power generation;
  - (d) Utah will promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;
  - (e) Utah will allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;
  - (f) Utah will pursue energy conservation, energy efficiency, and environmental quality;
  - (g)
    - (i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and
    - (ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;
  - (h) Utah will maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:
    - (i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and
    - (ii) investment will occur only when adequate financial returns can be realized;
- and
  - (i) Utah will promote training and education programs focused on developing a comprehensive understanding of energy, including programs addressing:
    - (i) energy conservation;
    - (ii) energy efficiency;
    - (iii) supply and demand; and
    - (iv) energy related workforce development.
- (2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).
- (3) A person may not file suit to challenge a state agency's action that is inconsistent with Subsection (1).

Renumbered and Amended by Chapter 382, 2008 General Session

**63M-4-302. Legislative committee review.**

The Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee shall review the state energy policy

annually and propose any changes to the Legislature.

Renumbered and Amended by Chapter 382, 2008 General Session

**63M-4-401. Creation of Office of Energy Development -- Director -- Purpose -- Rulemaking regarding confidential information.**

- (1) There is created an Office of Energy Development.
- (2) (a) The governor's energy advisor shall appoint a director of the office.  
(b) The director shall report to the governor's energy advisor and may appoint staff as funding within existing budgets allows.  
(c) The office may consolidate energy staff and functions existing in the State Energy Program.
- (3) The purposes of the office are to:
  - (a) serve as the primary resource for advancing energy development in the state; and
  - (b) implement:
    - (i) the state energy policy under Section 63M-4-301; and
    - (ii) the governor's energy goals and objectives.
- (4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:
  - (a) seek federal grants or loans;
  - (b) seek to participate in federal programs; and
  - (c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.
- (5) The office shall perform the duties required by Sections 59-7-614.7 and 59-10-1029 and Part 5, Alternative Energy Development Tax Credit Act.
- (6) (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.  
(b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

Amended by Chapter 37, 2012 General Session

Amended by Chapter 410, 2012 General Session

**63M-4-402. In-state generator need -- Merchant electric transmission line.**

- (1) As used in this section:
  - (a) "Capacity allocation process" means the process outlined by the Federal Energy Regulatory Commission in its final policy statement dated January 17, 2013, "Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission," 142 F.E.R.C. P61,038 (2013).
  - (b) "Certificate of in-state need" means a certificate issued by the office in accordance with this section identifying an in-state generator that meets the

requirements and qualifications of this section.

(c) "Expression of need" means a document prepared and submitted to the office by an in-state merchant generator that describes or otherwise documents the transmission needs of the in-state merchant generator in conformance with the requirements of this section.

(d) "In-state merchant generator" means an electric power provider that generates power in Utah and does not provide service to retail customers within the boundaries of Utah.

(e) "Merchant electric transmission line" means a transmission line that does not provide electricity to retail customers within the boundaries of Utah.

(f) "Office" means the Office of Energy Development established in Section 63M-4-401.

(g) "Open solicitation notice" means a document prepared and submitted to the office by a merchant electric transmission line regarding the commencement of the line's open solicitation in compliance with 142 F.E.R.C. P61,038 (2013).

(2) As part of the capacity allocation process, a merchant electric transmission line shall file an open solicitation notice with the office containing a description of the merchant electric transmission line, including:

- (a) the proposed capacity;
- (b) the location of potential interconnection for in-state merchant generators;
- (c) the planned date for commencement of construction; and
- (d) the planned commercial operations date.

(3) Upon receipt of the open solicitation notice, the office shall:

(a) publish the notice on the Utah Public Notice Website created under Section 63F-1-701;

(b) include in the notice contact information; and

(c) provide the deadline date for submission of an expression of need.

(4) (a) In response to the open solicitation notice published by the office, and no later than 30 days after publication of the notice, an in-state merchant generator may submit an expression of need to the office.

(b) An expression of need submitted under Subsection (4)(a) shall include:

- (i) a description of the in-state merchant generator; and
- (ii) a schedule of transmission capacity requirement provided in megawatts, by point of receipt and point of delivery and by operating year.

(5) No later than 60 days after notice is published under Subsection (3), the office shall prepare a certificate of in-state need identifying the in-state merchant generators.

(6) Within five days of preparing the certificate of in-state need, the office shall:

(a) publish the certificate on the Utah Public Notice Website created under Section 63F-1-701; and

(b) provide the certificate to the merchant electric transmission line for consideration in the capacity allocation process.

(7) The merchant electric transmission line shall:

(a) provide the Federal Energy Regulatory Commission with a copy of the certificate of in-state need; and

(b) certify that the certificate is being provided to the Federal Energy Regulatory Commission in accordance with the requirements of this section, including a citation to this section.

(8) At the conclusion of the capacity allocation process, and unless prohibited by a contractual obligation of confidentiality, the merchant electric transmission line shall report to the office whether a merchant in-state generator reflected on the certificate of in-state need has entered into a transmission service agreement with the merchant electric transmission line.

(9) This section may not be interpreted to:

(a) create an obligation of a merchant electric transmission line to pay for, or construct any portion of, the transmission line on behalf of an in-state merchant generator; or

(b) preempt, supersede, or otherwise conflict with Federal Energy Regulatory Commission rules and regulations applicable to a commercial transmission agreement, including agreements, or terms of agreements, as to cost, terms, transmission capacity, or key rates.

(10) Subsections (2) through (9) do not apply to a project entity as defined in Section 11-13-103.

Enacted by Chapter 294, 2014 General Session

**63M-4-501. Title.**

This part is known as the "Alternative Energy Development Tax Credit Act."

Enacted by Chapter 410, 2012 General Session

**63M-4-502. Definitions.**

As used in this part:

(1) "Alternative energy" is as defined in Section 59-12-102.

(2) (a) "Alternative energy entity" means a person that:

(i) conducts business within the state; and

(ii) enters into an agreement with the office that qualifies the person to receive a tax credit.

(b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).

(3) "Alternative energy project" means a project produced by an alternative energy entity if that project involves:

(a) a new or expanding operation in the state; and

(b) (i) utility-scale alternative energy generation; or

(ii) the extraction of alternative fuels.

(4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:

(a) did not exist within the state before:

(i) the alternative energy entity entered into an agreement with the office in accordance with Section 63M-4-503; and

- (ii) the alternative energy project began;
  - (b) is not shifted from one location in the state to another location in the state;
- and
- (c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.
- (5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy project by an alternative energy entity or a new incremental job within the state under the following:
- (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
  - (b) Title 59, Chapter 10, Individual Income Tax Act; and
  - (c) Title 59, Chapter 12, Sales and Use Tax Act.
- (6) "Office" is as defined in Section 63M-4-401.
- (7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
- (8) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.
- (9) "Tax credit certificate" means a certificate issued by the office that:
- (a) lists the name of the tax credit certificate recipient;
  - (b) lists the tax credit certificate recipient's taxpayer identification number;
  - (c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and
  - (d) includes other information as determined by the office.
- (10) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Enacted by Chapter 410, 2012 General Session

**63M-4-503. Tax credits.**

- (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
- (b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office, in consultation with other state agencies as necessary, shall certify:
- (i) that the alternative energy entity plans to produce in the state at least:
    - (A) two megawatts of electricity;
    - (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent production; or
    - (C) 250 barrels per day if the alternative energy project is a biomass energy fuel production;
  - (ii) that the alternative energy project will generate new state revenues;
  - (iii) the economic life of the alternative energy project produced by the alternative energy entity;
  - (iv) that the alternative energy entity meets the requirements of Section 63M-4-504; and

(v) that the alternative energy entity has received a Certificate of Good Standing from the Division of Corporations and Commercial Code.

(2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the office shall enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (3).

(3) (a) Subject to Subsection (3)(b), if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 20 years or more:

(i) the office shall grant a tax credit for the lesser of:

(A) the economic life of the alternative energy project; or

(B) 20 years; and

(ii) the tax credit is equal to 75% of new state revenues generated by the alternative energy project.

(b) For a taxable year, a tax credit under this section may not exceed the new state revenues generated by an alternative energy project during that taxable year.

(4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement described in Subsection (2) with the office shall:

(a) annually file a report with the office showing the new state revenues generated by the alternative energy project during the taxable year for which the alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029;

(b) subject to Subsection (5), annually file a report with the office prepared by an independent certified public accountant verifying the new state revenue described in Subsection (4)(a);

(c) subject to Subsection (5), file a report with the office at least every four years prepared by an independent auditor auditing the new state revenue described in Subsection (4)(a);

(d) provide the office with information required by the office to certify the economic life of the alternative energy project produced by the alternative energy entity, which may include a power purchase agreement, a lease, or a permit; and

(e) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1029.

(5) An alternative energy entity for which a report is prepared under Subsection (4)(b) or (c) shall pay the costs of preparing the report.

(6) The office shall annually certify the new state revenues generated by an alternative energy project for a taxable year for which an alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029.

Amended by Chapter 414, 2014 General Session

**63M-4-504. Qualifications for tax credit -- Procedure.**

(1) The office shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.

(2) A tax credit applicant shall provide the office with:



- (a) an application for a tax credit certificate;
  - (b) documentation that the tax credit applicant meets the standards and requirements described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
  - (c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
- (3) (a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
- (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.
- (4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:
- (a) deny the tax credit; or
  - (b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.
- (5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
- (a) enter into the agreement described in Section 63M-4-503;
  - (b) issue a tax credit certificate to the tax credit applicant; and
  - (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.
- (6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.
- (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-4-503(4).

Enacted by Chapter 410, 2012 General Session

**63M-4-505. Report to the Legislature.**

The office shall report annually to the Public Utilities and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:

- (1) its success in attracting alternative energy projects to the state and the resulting increase in new state revenues under this part;
- (2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
- (3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Enacted by Chapter 410, 2012 General Session